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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

LAURA DiGIORGIO,

Defendant and Appellant.

G041559

(Super. Ct. No. FWV039955)

O P I N I O N

Appeal from a judgment of the Superior Court of San Bernardino County,
Michael R. Libutti, Judge. Affirmed.

Robert G. Schwartz, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Gary W. Schons, Assistant
Attorney General, Pamela Ratner Sobeck and James H. Flaherty III, Deputy Attorneys
General, for Plaintiff and Respondent.

Laura DiGiorgio appeals from a judgment after a jury convicted her of nine counts of workers' compensation insurance fraud. DiGiorgio contends there was insufficient evidence to support her convictions and suggests the trial court erroneously instructed the jury. In addition to these claims of error, DiGiorgio requests this court to review the record to determine whether prejudicial error occurred in the trial court. None of her contentions have merit, and we affirm the judgment.

FACTS

Introduction

From August 2002 to June 2004, DiGiorgio was employed as a police officer by the City of Riverside. On April 22, 2003, while off duty, DiGiorgio was a passenger in a friend's vehicle that was struck from behind by another vehicle on the freeway. On May 15, 2003, she filed a claim with MetLife Auto and Home (MetLife) based on the off-duty accident. DiGiorgio advised MetLife she had actual damages. On February 20, 2004, she accepted MetLife's settlement. On June 1, 2004, she completed and submitted a claim to the city for workers' compensation. DiGiorgio claimed she had sustained an injury at work to her lower back, right hip, and leg. On the portion of the form that called for information regarding when and where the injury was sustained, she wrote, "'Patrol/onset of back injury.'" Initially, she did not indicate a specific date of injury but later attributed her injury to an on-duty incident on September 5, 2003. In her workers' compensation claim, she made no mention of the April 2003 accident.

A first amended information charged DiGiorgio with 11 counts of workers' compensation fraud (Ins. Code, § 1871.4, subd. (a)(2))¹ based on statements she made in connection with her workers' compensation claim. A jury convicted DiGiorgio of nine counts of workers' compensation fraud. The jury was unable to reach a verdict on two counts, and the trial court declared a mistrial as to those two counts.

¹ All further statutory references are to the Insurance Code, unless otherwise indicated.

April Off-Duty Accident

Two days after the April 2003 off-duty rear-end collision, DiGiorgio went to Kaiser Permanente (Kaiser) complaining of soreness in the back of her neck and across her shoulder. As a result of the examination, a doctor indicated DiGiorgio was completely unable to work for two days. On April 30, 2003, roughly a week after the accident, DiGiorgio went to see Dr. Adam Vigil at his office. DiGiorgio described mild to moderate pain to her neck and back between the neck and lumbar spine. DiGiorgio also reported she was “experiencing intermittent, 26 to 50 percent of the time [she was] awake . . . , right posterior thigh tingling pain.” Upon examination, Vigil found DiGiorgio had pain and tenderness in the neck region, and “[r]estricted range of motion with misalignment that was irritating the nerve.” In the thoracic region, she had a mild level of pain upon palpitation and some muscle tenderness and spasm in the mid portion of the neck. Vigil performed a chiropractic technique for manipulating the spine towards normal alignment.

On May 14, 2003, DiGiorgio called her driver’s insurance company in reference to the April accident and indicated she was injured and receiving treatment. The injury she described was to her neck and lower back. She wanted to find who the other driver’s insurance company was. The driver’s carrier was unable to provide DiGiorgio with that information.

On May 15, 2003, DiGiorgio filed a claim with the other driver’s insurance company, MetLife. On May 29, 2003, DiGiorgio advised MetLife she had been seeing a chiropractor for her back pain and was advised to continue treatment, but she was not sure if she would. She identified her occupation as a police officer and said she had missed one week of work as a result of the accident. She claimed a total of \$972 in lost wages. MetLife discussed settlement with her and sent her medical and authorization forms.

On February 13, 2004, DiGiorgio advised MetLife she had actual damages in the amount of \$211 to Vigil, \$181 to Kaiser, and \$974.80 in lost wages. On February 20, 2004, DiGiorgio accepted MetLife's settlement offer of \$1,866. A check was later issued in that amount to DiGiorgio, which she cashed.

Workers' Compensation Claim

During the course of the workers' compensation claim process, DiGiorgio was interviewed by Investigator Ellyn Merendino and examined by two medical experts. She also was deposed regarding the details of her claim. It is DiGiorgio's statements she made during the interview, the examinations, and her deposition that gave rise to the workers' compensation fraud allegations. We will discuss each of the allegations in turn.

Counts 6 and 7-Merendino Interview

When the city opened a workers' compensation file it assigned Investigator Merendino to investigate the claim. On June 9, 2004, Merendino interviewed DiGiorgio for the purpose of determining the cause of the injury. DiGiorgio told Merendino that in August or September of 2003, she was struck by a suspect's vehicle while working patrol. When Merendino asked if she had ever had a back problem, DiGiorgio indicated she had not. When Merendino asked if she thought her injury was a result of being struck by the suspect's vehicle, DiGiorgio stated, "that's—that's the most predominant sticking in my mind. I—I just know that I haven't been injured off duty." At no time did DiGiorgio mention being involved in an off-duty accident in April 2003. When asked at the conclusion of the interview if everything she had stated was true to the best of her ability, DiGiorgio answered, "Yes."

DiGiorgio testified when she was interviewed by Merendino she knew Merendino was there to talk to her about the workers' compensation claim she had filed. DiGiorgio stated that at all times she was truthful and never intended to mislead Merendino. She explained when she denied ever having had a back problem, she meant

she had never injured her lower back while off duty. When she said she had never been injured off duty, she again explained she was focused on a lower back injury.

Counts 1 and 2-Dr. Brett Diaz Examination

As part of the workers' compensation claim investigation, DiGiorgio was given the names of three doctors, each of whom was approved to evaluate her medical condition. From the list, DiGiorgio selected Dr. Brett Diaz, a chiropractor. On August 16, 2004, Diaz examined DiGiorgio. Prior to the examination, DiGiorgio was required to provide Diaz with a "history of injury[.]" DiGiorgio advised Diaz that the pain she was experiencing was a result of being struck by a vehicle while on duty. Diaz testified patients are asked to disclose previous medical problems, injuries, accidents, and medical conditions because these may potentially affect the injury in question. DiGiorgio disclosed to Diaz she had been involved in a minor vehicle accident in May 2003 but indicated she had sustained no injuries and received no treatment as a result of this minor traffic accident. DiGiorgio further represented to Diaz "[s]he did not recall any off-duty injuries."

DiGiorgio testified she was truthful when she advised Diaz of the cause of her injury. She believed her lower back pain was a result of her on-duty accident and was aggravated by the wearing of her gun belt. She was not attempting to hide anything and considered the visit for evaluation not treatment.

DiGiorgio insisted she was truthful when she told Diaz she had sustained no injuries as a result of the April car accident. Despite having visited Kaiser and having seen Vigil, DiGiorgio did not believe she had been injured. She explained her definition of injury required prolonged pain, persistent pain, or debilitating pain, and not soreness and stiffness. DiGiorgio maintained she was truthful in denying having received treatment as a result of the April accident. She considered her visit to Vigil to be diagnostic only.

Diaz testified an entire patient history is necessary to make an accurate assessment and is relevant on the issues of causation and apportionment. He further testified knowledge of prior chiropractic treatment and injury-related absence from work would have been relevant to his evaluation of DiGiorgio's alleged workplace injury. According to Diaz, DiGiorgio was well aware she was being examined for evaluation of her employment-related injury.

Counts 4 and 5-Dr. Keolanui Chun Examination

On September 16, 2004, Dr. Keolanui Chun, an orthopedic surgeon, examined DiGiorgio in connection with her workers' compensation claim to evaluate lower back complaints and render an opinion as to causation. DiGiorgio indicated she was experiencing pain in her middle and lower back as a result of a work accident. She reported that in approximately August 2003 she was injured while working as a single patrol officer. She had performed a traffic stop on a Ford truck. The truck reversed and she was struck by the bumper in the lower leg causing her to fall backwards into a sitting position. She also described hitting her head on the bars of her patrol car. The truck then drove away. Her supervisor offered her medical attention at the scene, but she declined. No injury report was filed at the time of the incident.

When asked about her medical history, DiGiorgio "denied any prior injury to her lower back," and denied prior similar physical complaints. DiGiorgio reported she began experiencing right leg pains on or about December 2003. She also complained of severe lower back spasms. Subsequent to his examination of DiGiorgio, Chun reviewed a report by Vigil regarding treatment of DiGiorgio in April 2003, and testified the report indicated DiGiorgio had experienced and reported similar physical complaints to Vigil. DiGiorgio did not advise Chun of her treatment by Vigil. After seeing DiGiorgio, Chun also reviewed a report dated April 24, 2003, prepared by a Kaiser physician's assistant. The report indicated DiGiorgio informed the physician's assistant two days prior to seeking treatment at Kaiser that she had been a front-seat passenger in a vehicle that was

rear ended. DiGiorgio complained of soreness in the back of her neck and across the shoulder. Chun testified the information in this report, although a complaint as to pain in a different part of the body, would, nonetheless, have important information for him to assist him in determining the origin of her condition.

DiGiorgio testified when she advised Chun she had never had a similar complaint, she was being truthful. When she told Chun her lower back pain was a result of being struck on duty, she was being truthful. She denied experiencing lower back pain after the April 2003 collision or ever telling anyone she received a lower back injury or felt low back pain. Chun never asked her about prior pain to her neck or her upper back, so she did not mention the April accident. She repeatedly stated she was not injured in the collision.

Counts 3, 10, and 11-Deposition

In March 2005, DiGiorgio's deposition was taken in connection with her workers' compensation case. During the course of her testimony, DiGiorgio claimed the first time she could recall her lower back hurting her was after being struck by a car while on duty in either August or September 2003. She indicated immediately after the accident she felt pain in her lower back and discomfort in her leg. When asked if she had ever seen a chiropractor prior to being seen by Diaz, DiGiorgio said she had only seen a chiropractor once a couple years back "just to get adjusted." She denied recalling the name of the chiropractor she had seen for the adjustment. When asked if, other than the on-duty accident she had described, she had ever been in any accident where she had injured herself, DiGiorgio responded, "No." When asked when she first received any medical care for her back problem, DiGiorgio indicated the first treatment she had received was at the end of 2003 at Kaiser.

Regarding her deposition testimony, DiGiorgio began by explaining her attorney had not adequately prepared her for her deposition. DiGiorgio testified she had not thought about the April accident and the ensuing visits to Kaiser and Vigil in a long

time. DiGiorgio also explained she was feeling quite ill at the time of her deposition and her request to continue the deposition had been denied. Under the circumstances, she answered the questions truthfully and to the best of her ability. When asked about prior treatment, DiGiorgio maintained she did not provide information about her visit to Kaiser and Vigil in April because the focus of those visits was on her upper neck and not her lower back. DiGiorgio testified she first received actual treatment for her lower back problem at Kaiser in late 2003.

DiGiorgio conceded she was wrong when she testified at her deposition she went to see Vigil for a general adjustment, but contended she was trying to answer the questions truthfully. She explained the reason for seeing Vigil was not clear in her head at the time of her deposition and had she had time to review the record before her deposition she would have answered differently.

Other Defense Evidence

DiGiorgio called a number of witnesses who attested to her honesty. DiGiorgio's friend testified regarding the April freeway accident and described the accident as very insignificant. A physician's assistant from Kaiser testified when DiGiorgio was seen in April 2003, she complained about soreness of the back of the neck and across the shoulders, and did not complain about lower back pain or tingling in her leg. The same physician's assistant testified DiGiorgio returned to Kaiser in March 2004, and complained about lower back pain. In connection with her complaint of lower back pain, DiGiorgio reported she wore a heavy gun belt while working as a police officer. Another physician's assistant testified regarding a May 2003 visit DiGiorgio made to Kaiser. At that visit, DiGiorgio complained of itchy eyelids and a tender lump between the toes on her left foot. She did not make any complaints of pain to her neck or back.

A Kaiser physician testified that in November 2003 DiGiorgio came in complaining of burning during urination, nausea, and lower back pain. She described the

back pain as chronic. She also indicated she was experiencing constant cramps in her right flank. DiGiorgio did not complain about pain in her neck or upper back.

When DiGiorgio testified, she did not dispute being in an accident in April 2003 while off duty. She explained the car she was riding in was in bumper-to-bumper traffic when it was struck from behind. She felt no initial pain as a result of the collision. In addition to providing innocent explanations for the alleged misrepresentations, she recounted in great detail the circumstances of her September 2003 on-duty accident and reasons for the delay in reporting the injury. She explained that despite being hit and thrown to the ground, she felt no immediate pain. When things calmed down, she began to experience some pain. Over the next few weeks, she began experiencing pain in her lower back and at her tailbone. Although her pain began to increase over the next few months, DiGiorgio did not advise the police department she was experiencing significant pain as a result of being hurt on the job because she did not want it to appear to others that she could not handle the pain. Eventually, wearing her gun belt, vest, and other equipment made the pain intolerable, and she then provided the police department with an off-work order from her private physician. When she submitted the form to the personnel sergeant he inquired as to how she had injured herself. When she told him the back did not get better after being hit by the car while on duty, he insisted she file a claim.

Regarding her settlement with MetLife, DiGiorgio indicated although she was not injured in the April collision, she accepted the money because her insurance agent advised her settlements were customary. She quoted her agent as saying the settlement was simply “go away money.” DiGiorgio stated that at the time of the settlement she knew she had a problem with her lower back, and if she believed her injury had anything to do with the April collision she never would have settled the claim for such a modest amount.

DiGiorgio testified she went to Kaiser “just to get checked out to make sure [she] was 100 percent okay to return to work.” Because she was still in training she feared anything other than performance at 100 percent capacity might negatively impact her probation. She did not believe she had been injured in the accident and the physician’s assistant at Kaiser confirmed that fact telling her soreness and stiffness were to be expected. DiGiorgio conceded the Kaiser physician’s assistant, after examining her, gave her an order allowing her to take two days off work and that she did take two days off. She explained the only reason she took the two days off was to make sure she was at 100 percent physical capacity and that she advised her employer as to why she was taking the time off. She denied receiving any treatment at Kaiser.

As to why she visited Vigil, DiGiorgio explained she was sore but she was unsure how much of that was “in [her] head” Because no x-rays were taken at Kaiser, a friend had urged her to see Vigil for the purpose of having x-rays taken. She admitted filling out a form stating she was experiencing pain in her neck and between her shoulders. She did not indicate any pain in her legs. When asked about Vigil’s notes that indicated she had complained about pain in her right leg, DiGiorgio stated she had no recollection of making such complaints and indicated her friend did most of the talking to the doctor. She maintained the service she received from Vigil was described as an adjustment that she believed “was more of a massage thing.” She denied receiving any treatment from Vigil for her lower back.

Motion for New Trial and Sentencing

Following the verdicts, DiGiorgio filed a motion for new trial. She argued there was insufficient evidence to support the verdicts and that the trial court’s instructions to the jury were legally insufficient. After having read and considered the motion, the court denied the motion. The court sentenced DiGiorgio to five years of probation with a condition she serve 120 days in custody.

DISCUSSION

DiGiorgio raises three issues on appeal. First, she argues there was insufficient evidence to support the convictions. Second, she contends the trial court erroneously instructed the jury. Finally, she “requests this court to review the record to determine whether prejudicial error occurred in the trial court” We will address each of these issues in turn.

I. Sufficiency of the Evidence

DiGiorgio asserts “[t]he prosecution case was remarkable for its failure to prove the elements of the crime charged” She contends the prosecution had the burden of proving she knowingly made material statements that were relied upon by the City of Riverside and the medical practitioners evaluating her work-related injury. DiGiorgio asserts that because the prosecution failed to establish this burden, her convictions must be reversed. We disagree.

When reviewing a claim of insufficiency of the evidence, we “examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence, . . . such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.]” (*People v. Kraft* (2000) 23 Cal.4th 978, 1053 (*Kraft*)). Before a judgment of conviction may be set aside for insufficiency of the evidence, ““it must be made clearly to appear that upon no hypothesis whatever is there sufficient substantial evidence to support the conclusion reached”” by the trier of fact. (*People v. Fowler* (1987) 196 Cal.App.3d 79, 89.) Evidence is substantial when it is reasonable, credible, and of solid value. (*Kraft, supra*, 23 Cal.4th at p. 1053.)

Section 1871.4, subdivision (a)(2), provides, in relevant part: “It is unlawful to do any of the following: [¶] . . . [¶] 2. Present or cause to be presented a knowingly false or fraudulent written or oral material statement in support of, or in opposition to, a claim for compensation for the purpose of obtaining or denying any compensation, as defined in [s]ection 3207 of the Labor Code.” Compensation includes

workers' compensation. (Lab. Code, § 3207.) Section 1871.4, subdivision (a)(2), makes it unlawful for a person to knowingly make a false, material statement for the purpose of obtaining workers' compensation benefits.

“The word ‘knowingly’ imports only a knowledge that the facts exist” and “does not require any knowledge of the unlawfulness of the act or omission.”

(Pen. Code, § 7, par. five.) A misrepresentation is “material” if it “‘*concerns a subject reasonably relevant to the insured’s investigation, and if a reasonable insurer would attach importance to the fact misrepresented. . . .*’ [Citations.]” (*People v. Gillard* (1997) 57 Cal.App.4th 136, 151.)

Before we begin assessing the sufficiency of the evidence on each count, we must address DiGiorgio’s contention the prosecution must prove the medical practitioner or the insurer relied on the material misrepresentation. First, section 1871.4, subdivision (a)(2), does not require the prosecution to prove that any healthcare provider or the City of Riverside relied on any statement. Second, her reliance on *People v. Booth* (1996) 48 Cal.App.4th 1247, is misplaced. In *Booth*, defendant claimed the omission of the word “knowingly” from the trial court’s jury instruction defining the elements of insurance fraud rendered the instruction constitutionally deficient. The court rejected this argument finding the element of “knowledge,” which defendant claimed was erroneously “missing from the instruction, [was] inherent in the concept of specific intent to defraud.” (*Id.* at p. 1253.) The only mention of the concept of reliance in *Booth* is in a footnote. There the court states that “[b]y presenting information [defendant] knew to be false with the intent that [the insurance company] rely upon it to settle his claim, [defendant] acted with specific intent to defraud.” (*Id.* at p. 1254, fn. 3.) Clearly, *Booth* does not support DiGiorgio’s claim the prosecution must prove the medical practitioner or the insurer must have relied on the material misrepresentation. DiGiorgio cites no other authority for her claim reliance must be proved, and we have found none. We will now consider the sufficiency of the evidence as to each count.

Counts 6 and 7-Merendino Interview

When Merendino interviewed her, DiGiorgio represented she had never had a back problem prior to being struck by a suspect's car while on duty. She denied having been injured off duty and told Merendino she believed her current condition was a result of her on-duty accident. DiGiorgio never told Merendino she had been involved in an off-duty accident in April 2003. When she testified at trial, DiGiorgio stated she was truthful in her statements to Merendino and explained when she denied ever having had a back problem or having sustained an injury off duty, she meant she had never had a lower back problem and had never suffered an injury to her lower back off duty.

DiGiorgio never disputed she made the alleged statements to Merendino, but she offered explanations for her statements. It was for the jury to determine whether DiGiorgio's explanations were credible. As we have noted above, credibility determinations are made by the trier of fact, and not by an appellate court. In reviewing for substantial evidence, we view the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. Substantial evidence supports the jury's rejection of DiGiorgio's explanations and the finding her statements were knowingly false.

The City of Riverside assigned Merendino to interview DiGiorgio for the purpose of determining the cause of her alleged injury. DiGiorgio testified the point of meeting with Merendino was to talk about her workers' compensation claim. There can be no dispute DiGiorgio's statements were material within the meaning of the statute.

Counts 1 and 2-Diaz Examination

DiGiorgio advised Diaz that the pain she was experiencing was a result of being struck by a vehicle while on duty. Although she disclosed to Diaz she had been involved in a minor vehicle accident in May 2003, DiGiorgio indicated she had sustained no injuries and received no treatment as a result of this minor traffic accident.

DiGiorgio generally argues the prosecution failed to prove the alleged statements to Diaz were material misrepresentations, important to a reasonable insurer, or relied upon by the insurer. She contends her statement to Diaz that her off-duty accident resulted in no injuries was not material because Diaz indicated the significance of information regarding past injuries would depend on what those past injuries were. Not so.

DiGiorgio's statements as to the origins of her pain, her knowledge of the false nature of her statements, the details of her off-duty accident, and the explanation regarding her subsequent visits to medical professionals were alleged as material misrepresentations. In deciding whether any or all of these statements were knowingly false, the jury could rely on the entirety of the evidence and the credibility of the witnesses.

DiGiorgio maintained her pain was due to her on-duty accident and that she was not injured in her off-duty accident. Inconsistent with DiGiorgio's account of the details and effects of her off-duty accident as reported to Diaz was evidence that two days after the accident she sought medical attention at Kaiser, and was furnished with documentation indicating she was unable to work for two days. The jury also heard testimony from Vigil, a chiropractor, regarding his examination and treatment of DiGiorgio roughly a week after her off-duty accident. DiGiorgio's insurance claim based on her off-duty accident and her settlement of that claim were also facts upon which the jury could rely.

Regarding the materiality of DiGiorgio's statements regarding her medical history, Diaz testified a complete medical history is necessary to make an accurate assessment and it is relevant on the issues of causation and apportionment. Diaz testified information regarding prior chiropractic treatment and injury-related absence from work would have been relevant information. This testimony established the materiality of the

misrepresentations made to him. Reviewing the record in a light favorable to the prosecution, substantial evidence supports the jury's verdicts on counts 1 and 2.

Counts 4 and 5-Chun Examination

When she saw Chun, DiGiorgio denied she had suffered any prior injury to her back, and reported she began experiencing right leg pain in or about December 2003. At trial, DiGiorgio disputed her statements to Chun were misrepresentations and during her testimony offered various explanations for her statements. As evidenced by its verdicts, the jury concluded DiGiorgio's statements as alleged in counts 4 and 5 were material representations.

DiGiorgio neglected to include any information about her off-duty accident when she provided Chun with her medical history. Chun later learned from reports furnished to him that DiGiorgio had reported similar complaints to Vigil and had received treatment from him. Chun testified that although DiGiorgio's complaints to Vigil were as to pain in a different part of the body, that information would have been important to him in determining the origin of DiGiorgio's condition.

Again, it was for the jury to determine whether DiGiorgio's failure to provide Chun with information about her off-duty accident and about her visit to Vigil was innocent conduct or constituted material misrepresentations. Chun's testimony the omitted information would have been important to him is substantial evidence to establish the materiality of the misrepresentations. Reviewing the record in a light favorable to the prosecution, substantial evidence supports the jury's conclusion the statements alleged in counts 4 and 5 were knowing misrepresentations.

Counts 3, 10, and 11-Deposition

Three statements made by DiGiorgio during the March 2005 deposition were alleged to be material misrepresentations. When asked if she had ever seen a chiropractor prior to being seen by Diaz, DiGiorgio said she had only seen a chiropractor once a couple years back, "just to get adjusted." She denied ever having sustained an

injury in an off-duty accident. When asked when she first received any medical care for her back problem, DiGiorgio indicated the first treatment she had received was at the end of 2003 at Kaiser.

At trial, DiGiorgio conceded she was wrong when she testified at her deposition she went to see Vigil for a general adjustment but contended she was trying to answer the questions truthfully. To account for this and other questionable statements, DiGiorgio testified her attorney had not adequately prepared her for her deposition. She also explained she was ill the day she was deposed and had not refreshed her recollection as to the facts surrounding her off-duty accident before testifying. DiGiorgio maintained she did not provide information about her visit to Kaiser and Vigil in April because the focus of those visits was on her upper neck and not her lower back. She claimed that under the circumstances she answered the questions truthfully and to the best of her ability.

Once again, the jury was faced with conflicts in the evidence. Resolution of these conflicts required the jury to make critical credibility determinations. It is apparent from the jury's verdicts, it rejected DiGiorgio's innocent explanations for the alleged statements and concluded the statements were knowing misrepresentations.

The jury was not required to accept DiGiorgio's innocent explanation for incorrectly describing her visit to Vigil as a visit to a chiropractor a couple years back just to get adjusted. Vigil testified in great detail as to the pain DiGiorgio stated she was experiencing, his findings after the examination, and the treatment he provided to her. This testimony provided substantial evidence to contradict DiGiorgio's claim her statement was simply an innocent misrecollection and therefore, there was sufficient evidence supporting the jury's verdict on count 3.

DiGiorgio explained that when she testified at her deposition she denied having ever been injured off duty because she did not believe she was injured in the April 2003 off-duty car accident. Inconsistent with DiGiorgio's claim she had never sustained

an off-duty injury was evidence of her treatment at Kaiser, her two days off work, her treatment from Vigil, the claim she filed as a result of the off-duty car accident, and subsequent settlement of that claim. Based on this evidence, we conclude substantial evidence supported the jury's verdict on count 10.

The last deposition statement at issue is DiGiorgio's statement that the first time she received medical care for her back was at the end of 2003. Testimony regarding DiGiorgio's treatment at Kaiser and from Vigil in April directly contradicted DiGiorgio's statement regarding the initial date of treatment. This testimony was substantial evidence upon which the jury could rely in rejecting DiGiorgio's explanation she did mention treatment prior to the end of 2003 because the focus of that treatment was on her upper neck and not her lower back. Thus, we conclude substantial evidence supported the jury's verdict on count 11.

DiGiorgio's testimony regarding prior chiropractic care, prior off-duty injury, and initial date of treatment for her back were all material statements within the meaning of the statute because the subject matter was reasonably relevant to the insured's investigation, and a reasonable insurer would attach importance to the content of the statements. Reviewing the record in a light favorable to the prosecution, substantial evidence supports the jury's conclusion the statements alleged in counts 3, 10, and 11 were knowing misrepresentations.

In attacking the sufficiency of the evidence, DiGiorgio fails to recognize the standard under which this court reviews such claims. She repeatedly cites the defense evidence offered at trial to support her argument insufficient evidence supports her convictions. Appellate courts do not reweigh evidence. Conflicts in the evidence do not justify the reversal of a judgment, for it is the exclusive province of the trier of fact to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) Substantial evidence supports all the jury's verdicts.

II. Jury Instructions

DiGiorgio does not argue the jury instructions were misstatements of the law, but generally asserts the instructions regarding the elements of the crime were not supported by the evidence. DiGiorgio asserts “the trial court . . . must find legally sufficient evidence on the record to support the finding as the instruction permits” before it can give such instruction. She argues failing to make a finding that sufficient evidence supports an instruction before given such instruction is error. DiGiorgio misunderstands the modicum of evidence necessary to justify the giving of an instruction.

In a criminal trial, the trial court is required to give a requested instruction if there is substantial evidence to support it. In this context, substantial evidence means substantial enough to deserve consideration by the jury; in other words, evidence that a reasonable jury could find persuasive. (*People v. Barton* (1995) 12 Cal.4th 186, 201, fn. 8.) In deciding whether substantial evidence supports the giving of an instruction, the court considers “its bare legal sufficiency, not its weight.” (*People v. Breverman* (1998) 19 Cal.4th 142, 177.) An appellate court reviews de novo the claim a court failed to properly instruct the jury on the applicable principles of law. (*People v. Manriquez* (2005) 37 Cal. 4th 547, 581.)

In relevant part, the trial court instructed the jury on the substantive offense as follows: “Defendant is accused in counts 1 through 11 of the First Amended Information of having committed the crime of making a material misrepresentation in order to obtain workers’ compensation benefits, a violation of section 1871.4[, subdivision] (a)(2) [¶] Every person who, with specific intent to defraud, presents or causes to be presented, any false or fraudulent written or oral material statement in support of any claim for compensation for the purpose of obtaining any compensation as defined in [s]ection 3207 of the Labor Code, is guilty of the crime of making a material representation in order to obtain workers’ compensation benefits in violation of section 1871.4[, subdivision] (a)(1) [¶] In order to prove such this crime, each of the

following elements must be proved: [¶] 1. A person presented or caused to be presented a written or an oral statement and stated as true, matter which was false; [¶] 2. The person knew the statement was false; [¶] 3. The false statement was material; [¶] 4. That the purpose of the false or fraudulent material statement was to obtain compensation as defined in [s]ection 3207 of the Labor Code; and [¶] 5. That such person did such acts with the specific intent to defraud.”

The trial court also instructed the jury on material statements and compensation as follows. “A statement or representation is material if it concerns a subject reasonably relevant to the insured’s investigation and if a reasonable insurer would attach importance to the fact represented. The materiality of a statement or representation does not depend on its actual effect on the outcome of either the investigation or the claim.” “‘Compensation’ as defined in [s]ection 3207 of the Labor Code includes workers’ compensation benefits generally and medical treatment specifically.” Finally, the trial court instructed the jury each of the counts was a separate crime and the jury had to consider each count separately and return a verdict for each count.

We need not repeat again the evidence that was received at trial. As we painstakingly detail above, there was sufficient evidence supporting DiGiorgio’s conviction on each count. Therefore, we conclude the trial court properly instructed the jury as there was substantial evidence as to the elements of the crime on each count.

To the extent, if at all, that DiGiorgio contends the trial court’s instructions were vague and ambiguous and confused the jury, we disagree. The court properly instructed the jury that to convict DiGiorgio of the charged offenses, it had to determine whether the prosecutor proved beyond a reasonable doubt as to each count that DiGiorgio knowingly and with the specific intent to defraud made a false, material statement for the purpose of obtaining workers’ compensation benefits. The court’s instructions were legally correct.

III. New Trial Motion

Finally, DiGiorgio requests that this court “review the record to determine whether prejudicial error occurred in the trial court.” An appellate court is not required to examine undeveloped claims, nor to make arguments for parties. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.) DiGiorgio does not provide any reasoned argument as to why the court erred in denying her motion for new trial, or any discussion of related legal authority with appropriate citation to the appellate record, so we need not discuss it any further. (Cal. Rules of Court, rule 8.204(a)(1)(B); *People v. Stanley* (1995) 10 Cal.4th 764, 793 [every brief should contain a legal argument and if none is furnished on a particular point, the court may treat it as waived].) In any event, as the basis for her new trial motion was her contention insufficient evidence supported her convictions and the jury instructions were erroneous, we have addressed those claims and rejected them.

DISPOSITION

The judgment is affirmed.

O’LEARY, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.